

22ND ARIZONA INDIAN TOWN HALL

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22ND ARIZONA INDIAN TOWN HALL

**REPORT OF THE
22ND ARIZONA INDIAN TOWN HALL**

June 3-5, 2002

*“BUILDING STRONG TRIBAL COMMUNITIES THROUGH
EFFECTIVE GOVERNING STRATEGIES”*

INTRODUCTION

“One foot in the past and one foot in the present.” That’s how one Indian Town Hall participant summed up tribal-state relations, which sometimes seem to be mired in past history while dealing with 21st Century realities.

While the relationship between the tribal and federal governments have evolved over the past 200 years, tribal-state relations have had only 50 years to grow and develop. The first steps towards strong intergovernmental relationships began in the early 1950s, with the establishment of Indian affairs commissions and offices, including Arizona.

Today, intergovernmental relations sit at a crossroads. While shifting Federal Indian policy drives tribes faster down the track to self-reliance, other policies and Supreme Court decisions, such as the *Hicks* and *Atkinson* decisions chip away at tribal sovereignty, contributing to a general air of uncertainty.

Despite efforts from tribal, federal, state and private agencies, economic development has been slow to occur on many reservations. One significant

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contributing factor: many businesses are reluctant to locate on a reservation, citing the perceived lack of legal remedies on civil disputes.

Tribes still struggle to successfully integrate their traditional leadership models within the Western framework of democratically-elected leaders and representative governments.

However, devolution also holds a tremendous opportunity for the tribes and states to build strong working relationships. As the federal government steps back from oversight of a myriad of programs, the states and tribes are learning that building partnerships to serve the needs of their local citizens better utilizes scarce resources and provides more local flexibility.

The 22nd Arizona Indian Town Hall discussed these and other questions related to tribal self-governance, state and local government perceptions, and how the relationships between the tribes, state, local and federal governments can be enhanced to better build sustainable economies and stable tribal governments and communities.

This year's participants represented 15 tribes, state and education professionals, private businesses and community members from across the state. This year, we also welcomed participants from other states and nations.

However, only one elected tribal CEO, and just a few tribal council members, were present during discussions. This lack of tribal leaders among the participants could have limited the scope of the report. More representation from elected state and tribal leaders could have greatly enhanced the report.

This is their report.

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PANEL DISCUSSION 1 –TRIBAL GOVERNANCE AND POLITICS

What are some examples of traditional governmental structures in tribal communities? What are some modern examples of governmental structures in tribal communities? Is there evidence of traditional tribal governance structures in modern tribal governments? How did tribes come to adopt their current governmental structures? What constitutes political coalitions in tribal governments? Can a 2-party system and a tribal system of political coalitions work hand-in-hand? Why or why not? How do tribes perceive the political parties' ability to help them? How are these different types of coalitions organized? How can tribes, which are heavily registered in one political party, deal with outside governmental entities? Could the creation of intergovernmental relations committees supplement political coalitions? What are some other ways [such as the Arizona Restaurant Association, Arizona Tourism Alliance, Children's Defense Fund, Arizona American Indian Tourism Association, etc.], that tribes can use to advocate for their issues? What can the tribes do for their members living in urban and rural areas off-reservation? [Define 'urban.' Does it mean any and all Indians living off reservations, or does it mean only Indians living in Metropolitan Statistical Areas, defined by the U.S. Census as area with 50,000 or larger populations?] Should there be a formal relationship between the state and urban Indian entities, or should it be a relationship based on democratic representation?

While most tribes¹ have governmental structures that reflect federally-imposed models based on modern democratic processes, many also maintain traditional decision-making systems that combine civil, secular,

¹ *The terms tribes, American Indians/Alaska Natives, Native Americans and tribal members are all interchanged in this document.*

and spiritual values. Modern tribal governments, however, often do not include these traditional processes in decision-making, and may not effectively reflect the views and wishes of the whole tribal base. In some instances, these Indian Reorganization Act (IRA)-based government structures often do not adequately balance power, which can lead to power struggles within a tribe.

These systems can also discourage outside investment, and participation in tribal developments.

Tribal governments are seeking ways to formally recognize and include traditional practices and other methods to ensure the representation of all members in the tribe, equitable balance of power and fair business practices.

Clans, families, issues and non-profit structures form a larger role than does the political party system in forming tribal policy on the reservation. Communication and networking in tribal communities makes it easier to mobilize people around issues and/or candidates.

Tribes have not fully recognized their voting potential in block voting to impact political policies. Could tribes use their clan and family ties to mobilize people around issues vital to their communities?

On the other hand, other participants felt that tribal members are skeptical about becoming involved in off-reservation politics. For example, some tribal cultures emphasize non-interference in their neighbors' lives.

Because of the diversity of tribes and their culture, it is difficult for tribes to come together to support common issues. However, to be more effective in

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policy issues off the reservation, tribes and tribal members must find ways to meaningfully engage the political party system and outside groups who have similar purposes in order to gain political influence.

Some participants agreed that they do not want to be defined as “urban Indians,” but as tribal members living off their reservations.² Most participants noted that they maintain close ties to their homelands through participating in family, ceremonial and civic engagements. Most participants expressed the wish to return home to their reservations. Indian Town Hall participants recommend that tribal members living off reservations need to give back to their own tribes, respect their cultural values, and provide to their tribes what expertise their tribes may be able to utilize.

Participants felt that tribal governments should, at a minimum, recognize their members living off the reservation. To the extent possible, tribal, federal, county, city and state governments should provide resources to its off-reservation members, including housing, cultural and language instruction, religious practices, and for other programs and/or issues. The level of allocated resources should be based on each tribe’s ability to devote resources to its members. Resources might include money, education, cultural, religious practices, medical and housing assistance, etc.

While some participants felt that urban tribal members should not take needed resources away from reservations, where living conditions are harsher than urban areas, off-reservation tribal members feel they can play a valuable role in obtaining resources for all tribal members.

² According to the U.S. Census, “urban” is defined as an area with 50,000 or more population. In Arizona, the 2000 Census found that 37 percent of

PANEL DISCUSSION 2—ARIZONA POLITICS AND GOVERNANCE

How do tribes believe they are perceived by the state? How does the state believe it is perceived by the tribes? What state entities currently exist that serve, or can be made to serve, tribal interests? How can Indian Nations Legislative Day be better utilized as a forum for building strong tribal-state relations? [NOTE: Some of these entities include: the House Native American Affairs Committee, legislative study committees, the Governor's Office, the Arizona Commission of Indian Affairs (ACIA), boards/commissions and the Department of Commerce.] How can tribes better utilize existing state institutions? How can tribes participate in the state budget process? How can the tribes and state work together to ensure that all citizens receive services? How can state agencies help tribes secure funding through the legislative and/or administrative process? How can tribes use the political process to gain representation in statewide elected offices? Does the state determine data on tribes accurately? If not, how can state policies be changed—through the legislative or administrative process?

Participants felt that the state does not perceive the tribes as other governmental entities, but as only limited sovereigns. Due to conflicts over jurisdiction and resources, tension and distrust develops in relations between tribes and non-Indian governments.

Tribal members often feel that they are not and/or treated equally by state and local government agencies, and that their needs are not prioritized highly, especially where services are available from both tribal and state

American Indians and Alaska Natives live off-reservation, as opposed to 61.9 percent nationally.

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providers. The state's recognition of tribal sovereignty is not consistent, and tends to be interpreted based on what is most beneficial to the state in each situation; participants noted that one example is dispute resolution.

Tribes should work with existing state institutions to jointly modify services so those programs can be developed that actually serve the needs of Native Americans. Many participants were not aware that many of these state institutions existed, or if they were aware of them, felt that they paid only perfunctory attention to tribes.

One-day events do not build relationships that help either party. Participants note that the legislature needs to do more than just have a single day of contact with the tribes. The Indian Town Hall participants recommended that freshman legislators participate in an introductory "Indian Governments 101"-type seminar during Freshman Orientation, with materials developed and provided by the Arizona Commission of Indian Affairs.

Participants felt that legislators need to meet with tribal communities to discuss unmet needs and current issues, and spend time on a regular basis on reservations. Indian Town Hall participants also recommend that state legislators participate and engage in the Indian Town Hall, become educated on tribal issues, and mandate tribal consultation to work toward a true collaborative relationship with tribes.

Various state agencies play a role in providing state government functions and services to tribes and tribal members, but they are not able to play a meaningful role if tribes and tribal members are unaware or unfamiliar with them.

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Tribes need more education and information about how the state budget process work. They also need to articulate their priorities and develop relationships in defending their funding requests at the state level.

Participants note that the state needs to recognize the impact of tribal economies on the overall state economy.

Tribes need more information on the process of tapping into state funding sources to effectively gain resources for tribal programs. Tribal agencies, communities and members need to work with state agencies earlier in the process to identify issues that need resources. Then tribes should work with their legislative representatives to make sure those priorities stay in the budget. Tribes seeking to utilize state funds and resources should work with each other to develop a unified approach to their involvement in the state budget process.

The Indian Town Hall strongly recommends that the Governor's office mandate that all state agencies provide funding availability information to a central clearinghouse, which will serve to publicize this information and respond to tribal requests for information and assistance.

Participants felt strongly that elected state officials must maintain consistent communications with constituents—including the media—to keep them informed about important issues, races and candidates. Many tribal members believe that off-reservation elections have no impact on them. Tribes should educate their members about the specific, direct impact of state elections on daily life on the reservations, and why it is vital for tribal members to register to vote and to participate in voting in all, state, federal and local elections.

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Tribes should set up space on or near the reservation for candidates and elected officials to use of for visits to tribal communities and tribal members. Tribes can form coalitions and meet as a group to identify and resolve issues, and actively lobby for legislation to address these issues and priorities. Tribes can provide resources to these coalitions to host political forums.

Participants stressed that younger tribal members (those over 18) need to get involved in the elective process, and become empowered, knowledgeable voters through voter registration and internship programs. Participants recommended that barriers to participating in the election process, such as apathy and transportation deficiencies, be eliminated or minimized to ensure ample and equal opportunity for young adult members to fully engage in the government and voting process.

Tribal elders, who normally come out to vote in larger numbers, present a different dilemma. Barriers to elders' participation in elections include transportation and language barriers; participants recommended that elders' barriers to voting also be addressed.

Participants felt that the state does not collect accurate data on tribal communities. There is a strong perception that state data, used by state agencies such as DES, are flawed in determining unemployment and/or census data, and that the state is reluctant to use tribal data. Poor data is a challenge to tribal programs that rely on these statistics to apply for federal government funding. Tribes should collect their own data on a consistent basis and use them to ensure that states are using appropriate methodology, and that state data are comparable to the tribes'.

There is still interest from the tribes to work with the state to explore both administrative and legislative solutions to the data question.

PANEL DISCUSSION 3—INTERGOVERNMENTAL RELATIONS

What do you feel is the current state of tribal-state relations? Do you feel there is a need to maintain this relationship? Why or why not? What effective ways can be employed to encourage collaboration between business, industry, government and education when working to promote tribal economic development? Consider institutions such as the Arizona Association for Economic Development (AAED), the Center for American Indian Economic Development (CAIED) at NAU, Chambers of Commerce, Arizona Tri-Universities for Indian Education (ATUIE), the Arizona American Indian Tourism Association (AAITA) and the Native Nations Institute at UA. What value can tribes derive from participating in these collaborations? What value can these organizations and private sector businesses derive from participating in these collaborations? Could a "one-stop" approach to business questions help tribal-private sector collaboration? How can tribes enhance their community relations by using mechanisms to deal with people from other jurisdictions [non-Indians or non-tribal members, state and other entities]? Consider mechanisms such as the courts, sovereign immunity, intergovernmental agreements, and other institutional structures. Do tribal courts in general focus more on criminal or on civil law? Are tribal courts ready to deal with civil disputes between tribal governments and/or tribal members and non-Indian entities? Why or why not? History shows that federal Indian policy periodically shifts. What is the likelihood of another shift in the near future? How can tribes exercise their sovereign status to deal with these shifts? Is there a possibility that the Federal government will

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shift some or all of their trust responsibilities to the tribes, states and/or the private sector? Why or why not? Where will tribes, the federal trust responsibility, and federal Indian policy be in another 50 years? Where will the tribal-state relationship be in 50 years?

Many participants felt that relations and communications between the tribes and state are still in the early stages, but improving. Although intergovernmental relations at the program/agency level are generally perceived as good, participants felt that administrative and policy level relations are lacking. Participants pointed to intergovernmental agreements as contributing to improved relations.

Participants felt that there is room for improvement in tribal-state relations. Several groups stated that intergovernmental relations are sometimes mired in past history while dealing with 21st Century realities. One participant noted that tribal-state relations seem to have “one foot in the past and one foot in the present.” The recent gaming and stadium negotiations were presented as examples of the challenges faced in building tribal-state relations.

Participants feel that there is a wide gap in business and economic expertise among tribal communities. Participants recommend that business be separated from politics wherever practical. Tribes should carefully assess the types of businesses to be brought into communities, to ensure consistency with tribal land use policies and tribal cultures.

Many participants felt that the Bureau of Indian Affairs’ (BIA) regulations regarding reservation land use are a barrier to tribal economic development.

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Tribes should implement an annual statewide planning forum on tribal economic development and include tribes, private business, non-tribal governments, and education professionals.

Indian Town Hall participants recommend that tribes continue to develop a uniform commercial code (UCC). A UCC, combined with a strong, independent judiciary and streamlined administrative process, can be a means of attracting business. Participants recommend that limited waivers of sovereign immunity³ or other methods, such as the ability to establish corporations on the reservations, be explored as ways to attract business without jeopardizing tribal sovereignty.

Participants noted that tribal legal structures and court systems vary greatly in professionalism and jurisdiction. While some tribal courts serve as exemplary models, the lack of proper training and expertise in other tribal courts can lead to a loss of credibility for all tribal courts.

There are many issues with tribal courts having criminal jurisdiction over non-members. Strengthening tribal courts could enhance tribal sovereignty.

In addition to greater self-sufficiency, gaming has brought more non-Indians to the reservations, and is a springboard for attracting non-Indians to Indian culture, history and business opportunity. Participants feel that this is breaking stereotypes and misperceptions about tribal communities, and could contribute to greater opportunity for business development. Tribes

³ *Indian tribal governments have the same immunity from lawsuits as do other sovereign governments. Tribes can and do waive immunity for specific purposes, and/or may agree in writing to arbitration, in order to bring non-Indian businesses or other entities onto reservations. This is known as a 'limited waiver of tribal sovereignty.'*

should educate the public about tribal laws and legal resources using publications and technology resources.

In the wake of federal devolution, the tribal-state relationship will become more important. However, while forging stronger relationships with states, tribes should still continue to press the federal government to uphold its trust and treaty responsibilities.

The general trend in federal government policies is the shifting away from providing resources and assistance to individuals and shifting toward privatization and devolution (local control).

Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, and the success of self-governance by some tribes has brought more attention to the deficiencies of BIA programs and policies. However, participants also felt that smaller tribes still in need of BIA assistance may be shortchanged if the BIA is eliminated.

Participants noted that there is no alternative federal agency if the BIA is eliminated. Tribes need to be at the table when decisions regarding federal programs, such as the BIA and welfare reform are being made. Tribes should be proactive instead of reactive by exercising their sovereignty.

Participants noted that, "If a tribe is to be sovereign, it has to be recognized as sovereign."

Changes in tribal demographics, such as increases in population and/or per capital income, should also positively impact the tribes' influence in all areas of state governance.

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Tribal Organization and Reorganization Efforts

Tribe	Treaty/ IRA*	Year constitution ratified (or incorporated)**	Year(s) constitution/charter amended**
Ak-Chin Indian Community	IRA	Constitution, 1961	1966, 1969, 1971, 1973
Cocopah Tribe	IRA	Constitution, 1964	1964
Colorado River Indian Tribes	IRA	Constitution, 1937	1975
Fort McDowell Yavapai Nation	IRA	Constitution, 1936; charter, 1938	1999
Fort Mojave Indian Tribe	IRA	Constitution 1977 charter 1988	N/A
Fort Yuma-Quechan	IRA	Constitution, 1936	1974, 1997
Gila River	IRA	Constitution, 1946; charter 1938	1960, 1974
Havasupai	IRA	Constitution, 1939; charter 1946	1968, 1972, 1991
Hopi	IRA	Constitution, 1936	1969, 1980, 1993
Hualapai	IRA	Constitution, 1956; charter 1955	1990 (constitution), 1998 (charter)
Kaibab-Paiute	IRA	Charter 1934	1987
Navajo	Treaty	1868-treaty	No constitution

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Pascua Yaqui	IRA	Constitution, 1988	N/A
Salt River	IRA	Constitution, 1940	1971, 1990, 1996
San Carlos Apache	IRA	Constitution, 1936; charter 1955	1954, 1984
San Juan Southern Paiute	IRA	Constitution, 1996	N/A
Tohono O'odham	IRA	Constitution, 1937	1986
Tonto Apache	IRA		Total revision, 1995
White Mountain Apache	IRA	Constitution, 1938	Last amended 1993
Yavapai-Apache	IRA	Charter, 1948	Total revision, 1991
Yavapai-Prescott	IRA	Articles of incorporation, 1962	1970, 1975

**Process through which a tribe is formally organized--Indian Reorganization Act of 1934 (IRA), or through a government-to-government treaty. (IRA Section 15 provides for tribal business charters.)*

** *As of June 2000, information supplied by Bureau of Indian Affairs and the National Tribal Justice Resource Center.*

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